

## Message Text

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ORIGIN L-03

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DRAFTED BY L/OES:MBWEST:MF

APPROVED BY L/OES:TLEITZELL

L/ARA:DAGANTZ(DRAFT)

L:MBFELDMAN(DRAFT)

S/FW-COA:CDR. WELLING

ARA/LA/CAR:MR. HIGH

COAST GUARD:CDR. BROWN

JUSTICE:MR. ADAMS

PM/MC:MR. BRIANT

----- 085824

R 260053Z MAR 74

FM SECSTATE WASHDC

TO AMEMBASSY NASSAU

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E.O. 11652: N/A

TAGS: PFOR, PBOR, BF

REF: NASSAU 503

1. FOLLOWING IS IN RESPONSE TO QUESTIONS CONTAINED PARA  
4 REFTEL. BECAUSE SOME FACTS OF INCIDENT ARE NOT KNOWN  
AND OTHERS ARE CONTROVERTED, AND INVESTIGATION IS NOT  
YET COMPLETE, ANSWERS ARE NECESSARILY GENERAL AND SPECU-  
LATIVE. THEY DO NOT RPT NOT REPRESENT FORMAL USG  
OPINION OR CHARGES AGANST ANY PARTY. RESPONSES ARE FOR  
EMB INFORMATION ONLY. IF AND WHEN FACTS GATHERED  
ESTABLISH A VIOLATION OF U.S. LAW, APPROPRIATE USG OFFICIALS  
WILL CONSIDER PROSECUTION OF APPROPRIATE CREW MEMBERS  
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ON U.S. VESSEL. DEPT WILL KEEP EMB INFORMED.

2. WITH RESPECT TO QUESTION A, BAHAMIAN VESSEL DOES NOT APPEAR TO HAVE BEEN ACTING WITHIN THE BOUNDS OF INTERNATIONAL LAW IN ITS EXERCISE OF ITS HIGH SEAS FREEDOMS. UNDER INTERNATIONAL LAW AS CODIFIED IN 1958 GENEVA CONVENTION ON THE HIGH SEAS (TO WHICH U.S. AND U.K. ARE PARTIES AND TO WHICH IT MAY BE PRESUMED THAT THE BAHAMAS HAS SUCCEEDED ABSENT A STATEMENT TO THE CONTRARY, UNDER ITS JULY 10, 1973, NOTE TO THE SECRETARY GENERAL OF THE UNITED NATIONS), FREEDOMS OF THE HIGH SEAS INCLUDING NAVIGATION AND FISHING SHALL BE EXERCISED BY ALL STATES WITH REASONABLE REGARD TO THE INTERESTS OF OTHER STATES IN THE EXERCISE OF THEIR FREEDOMS OF THE HIGH SEAS. THE ALLEGED BAHAMIAN VESSEL ACTION OF DESTROYING FISHING GEAR ALREADY PLACED FOR FISHING IN INTERNATIONAL WATERS WOULD APPEAR TO CONSTITUTE AN UNREASONABLE INTERFERENCE WITH THE U.S. VESSEL'S HIGH SEAS RIGHT TO FREEDOM OF FISHING. FYI: THIS ANALYSIS RECOGNIZES THAT GCOB HAS NOT MADE A VALID CLAIM TO SPINEY LOBSTER AS RESOURCE OF THE CONTINENTAL SHELF. END FYI.

3. WITH RESPECT TO A SPECIFIC OFFENSE, BAHAMIAN VESSEL ACTION MAY CONSTITUTE OFFENSE UNDER GCOB DOMESTIC LAW, ALTHOUGH DEPT UNSURE OF GCOB LAWS IN THIS REGARD. FOR EXAMPLE, U.S. LAW PROHIBITS CERTAIN ACTIVITIES COMMITTED BY PERSONS ON U.S. VESSELS ON THE HIGH SEAS THESE INCLUDE LARCENRY (TAKING AND CARRYING AWAY OF PERSONAL PROPERTY OF ANOTHER WITH INTENT TO STEAL, 18 USC SUBSECTION 661); DESTRUCTION OF SOME TYPES PROPERTY SUCH AS VESSELS, MACHINERY OR APPLIANCES USED FOR NAVIGATION AND SHIPPING (18 USC SUBSECTION 1361); AND TAKING FROM THE PERSON OR PRESENCE OF ANOTHER ANYTHING OF VALUE, BY FORCE AND VIOLENCE, OR BY INTIMIDATION (18 USC SUBSECTION 2031).

4. WITH RESPECT TO QUESTION B, UNDER ARTICLE 6 OF HIGH SEAS CONVENTION SHIPS ARE, SAVE IN EXCEPTIONAL CASES EXPRESSEDLY PROVIDED FOR IN INTERNATIONAL TREATIES, SUBJECT TO THE EXCLUSIVE JURISDICTION OF THEIR FLAG STATE ON THE HIGH SEAS. THUS, PERSONS ON THIS VESSEL LIMITED OFFICIAL USE

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WOULD BE SUBJECT TO GCOB JURISDICTION ON THE HIGH SEAS, AND GCOB WOULD HAVE JURISDICTION, IF ITS DOMESTIC LAW SO PROVIDES, TO PROSECUTE VIOLATIONS OF GCOB LAW. ONE EXCEPTION TO EXCLUSIVE JURISDICTION RULE IS IN CASES OF PIRACY, WHERE UNDER ARTICLE 19 OF CONVENTION ANY STATE MAY SEIZE A PIRATE SHIP IN INTERNATIONAL WATERS AND THE COURTS OF THE STATE WHICH CARRIED OUT THE SEIZURE HAVE JURISDICTION TO DECIDE UPON THE PENALTIES

IMPOSED. HOWEVER, IT IS UNLIKELY THAT BAHAMIAN VESSEL'S ACTIVITIES CONSTITUTE PIRACY UNDER INTERNATIONAL LAW (SEE PARA 7 BELOW). U.S. LAW ALSO COVERS OFFENSES OF FOREIGN NATIONALS COMMITTED ON A U.S. FLAG VESSEL, AND IN SUCH CASE U.S. CAN PROSECUTE IF JURISDICTION OVER FOREIGN NATIONAL CAN BE OBTAINED. ABSENT A TREATY OR INTERNATIONAL AGREEMENT PROVIDING FOR SUCH OBLIGATION, A STATE IS NOT NORMALLY REQUIRED UNDER INTERNATIONAL LAW TO EXERCISE JURISDICTION IN ANY SPECIFIC CASE. STATES, OF COURSE, HAVE A GENERAL OBLIGATION TO ACT IN ACCORDANCE WITH INTERNATIONAL LAW AND TO PROMOTE THROUGH THEIR LEGISLATIVE AND EXECUTIVE PROCESSES A SITUATION IN WHICH THEIR CITIZENS WILL ALSO ACT IN ACCORDANCE WITH INTERNATIONAL LAW.

5. QUESTION C. DEPENDING ON EXACT FACTS OF CASE, U.S. VESSEL MAY HAVE VIOLATED U.S. LAW UNDER WHICH CERTAIN CRIMINAL OFFENSES ARE APPLICABLE WITHIN THE "SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE U.S." (18 USC SUBSECTION 7). THE SPECIAL MARITIME JURISDICTION INCLUDES ACTIVITIES ON VESSELS "BELONGING IN WHOLE OR IN PART TO U.S. CITIZENS" WHEN THEY ARE ON THE HIGH SEAS OR OTHERWISE WITHIN THE ADMIRALTY AND MARITIME JURISDICTION OF THE U.S. THE CRIMES MADE APPLICABLE INCLUDE, INTER ALIA, ASSAULT (18 USC SUBSECTION 113) AND KIDNAPPING (18 USC SUBSECTION 1201). WHETHER THESE CRIMES OR ANY OTHERS HAVE BEEN COMMITTED CANNOT BE EVALUATED UNTIL ALL FACTS ARE KNOWN ABOUT ACTIONS OF USG VESSEL AND BAHAMIAN ACTIONS TO WHICH IT WAS RESPONDING.

6. QUESTION D. SEE RESPONSE TO QUESTION B. IN GENERAL ONLY U.S. WOULD HAVE JURISDICTION OVER A U.S. VESSEL LIMITED OFFICIAL USE

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ON THE HIGH SEAS. HOWEVER, UNDER TERMS OF HIGH SEAS CONVENTION, IF THIS VESSEL HAD BEEN USED TO COMMIT PIRACY AND IS SEIZED BY A GCOB MILITARY OR AUTHORIZED GOVERNMENT VESSEL WHILE IT REMAINS UNDER THE CONTROL OF THE PERSONS GUILTY OF THAT ACT, GCOB WOULD HAVE JURISDICTION TO IMPOSE PENALTIES.

7. QUESTION E. PIRACY. ARTICLE 15 OF THE HIGH SEAS CONVENTION DEFINES PIRACY AS "ANY ILLEGAL ACTS OF VIOLENCE, DETENTION OR ANY ACT OF DEPREDAATION, COMMITTED FOR PRIVATE ENDS BY THE CREW OR PASSENGERS OF A PRIVATE SHIP OR A PRIVATE AIRCRAFT, AND DIRECTED: (A) ON THE HIGH SEAS, AGAINST ANOTHER SHIP OR AIRCRAFT, OR AGAINST PERSONS OR PROPERTY ON BOARD SUCH SHIP OR AIRCRAFT; (B) AGAINST A SHIP, AIRCRAFT, PERSONS OR PROPERTY IN A PLACE

OUTSIDE THE JURISDICTION OF ANY STATE . . . ." ACCORDING TO THE INTERNATIONAL LAW COMMENTARY TO THE 1956 DRAFT OF THE CONVENTION, AN INTENTION TO ROB IS NOT REQUIRED FOR PIRACY; ACTS MAY BE PROMPTED BY FEELINGS OF HATRED OR REVENGE, AND NOT MERELY BY DESIRE FOR GAIN. IT IS UNLIKELY UNDER FACTS AS WE UNDERSTAND THEM THAT BAHAMIAN VESSEL ACTION WOULD BE CONSIDERED PIRACY UNDER INTERNATIONAL LAW BECAUSE IT WAS COMMITTED ON THE HIGH SEAS AGAINST PROPERTY NOT ON BOARD A SHIP OR AIRCRAFT. (WE BELIEVE INTENTION OF DRAFTERS WAS THAT SECTION (B) SHOULD APPLY TO PROPERTY IN TERRITORIAL AREAS OUTSIDE THE JURISDICTION OF ANY STATE, BUT NOT TO HIGH SEAS AREAS. SINCE PIRACY IS AN EXCEPTION UNDER INTERNATIONAL LAW AND GIVES STATES SUBSTANTIAL UNUSUAL POWERS TO ACT AGAINST ANOTHER STATE, INTENT WAS TO LIMIT PIRACY IN HIGH SEAS AREAS TO ACTIVITIES CONCERNING AIRCRAFT, VESSELS OR PROPERTY THEREIN.) HOWEVER, THIS MIGHT NOT PREVENT BAHAMIAN VESSEL'S ACTION FROM CONSTITUTING PIRACY UNDER GCOB LAW, DEPENDING ON DEFINITIONS OF PIRACY USED THEREIN. UNDER DEFINITION ABOVE, U.S. VESSEL ACTIONS MAY CONSTITUTE PIRACY DEPENDING UPON THE FACTS, ALTHOUGH THERE COULD BE QUESTION WHETHER ACTS WERE COMMITTED FOR PRIVATE ENDS. IF THIS WERE THE CASE, VESSEL WOULD ALSO HAVE VIOLATED PROHIBITION AGAINST PIRACY IN U.S. LAW (18 USC SUBSECTION 1651).

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8. RESPONSE TO QUESTION F IS DIFFICULT ON OUR SCANTY KNOWLEDGE OF THE FACTS. ANSWER DEPENDS ON TYPE OF WEAPONS ON BOARD AND PURPOSE FOR WHICH WEAPONS BEING CARRIED. UNDER MUNITIONS CONTROL PROHIBITIONS, WHICH DO NOT APPLY TO CERTAIN SHOTGUNS WITH BARRELS 18 INCHES OR LONGER (SEE 10 FAM 180, APPENDIX 1A; 22 CFR 123.31), AN ADULT INDIVIDUAL WHO IS NOT TRAVELLING TO A COMMUNIST BLOC COUNTRY MAY TAKE WITH HIM UP TO THREE NON-AUTOMATIC FIREARMS WITHOUT A LICENSE, AS LONG AS THE ARMS ARE INTENDED SOLELY FOR PERSONAL USE (E.G., SPORTING, PROTECTION) AND NOT FOR RESALE. THIS EXEMPTION DOES NOT APPLY TO THE MASTER OR CREW MEMBERS OF VESSELS OR AIRCRAFT UNLESS UPON EACH DEPARTURE, THE ARMS ARE DECLARED TO A CUSTOMS OFFICER, SUBJECT TO INSPECTION BY CUSTOMS OFFICIALS. IN ADDITION, MASTER OR CREW COULD BE PROSECUTED IF THEY WERE CONVICTED FELONS OR OTHERWISE PROHIBITED FROM CARRYING WEAPONS; IF THE WEAPONS WERE REQUIRED TO BE REGISTERED AND WERE NOT REGISTERED; OR IF THE WEAPONS WERE BEING TRANSPORTED FOR AN ILLEGAL PURPOSE.

9. DEPT WOULD APPRECIATE ANY FURTHER KNOWLEDGE EMB

HAS CONCERNING FACTS OF CASE, AND WOULD ALSO APPRECIATE ANY FURTHER COMMENTS ON GCOB RESPONSE TO THIS CONFRONTATION AND ON ACTION GCOB IS LIKELY TO TAKE WITH RESPECT TO ITS OWN VESSEL. WE DO NOT WANT TO MAKE AN ISSUE OF WHAT GCOB APPEARS CONTENTED TO CONSIDER A CLOSED CASE. NOR DO WE WISH TO HEIGHTEN THE GCOB FOCUS ON DECLARING SPINEY LOBSTER A CREATURE OF THE SHELF. HOWEVER, WOULD APPRECIATE KNOWING IF GCOB MAKES ANY REFERENCE TO A POTENTIAL SHELF CLAIM IN THE CONTEXT OF THIS DISPUTE. RUSH

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## Message Attributes

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